



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking into the Review  
Of the California High Cost Fund B Program

Rulemaking 06-06-028

OPENING PHASE II COMMENTS OF AT&T CALIFORNIA (U 1001 C); AT&T  
ADVANCED SOLUTIONS INC. (U 6346 C); AT&T COMMUNICATIONS OF  
CALIFORNIA (U 5002 C); TCG SAN FRANCISCO (U 5454 C); TCG LOS ANGELES, INC.  
(U 5462 C); TCG SAN DIEGO (U 5389 C); AT&T MOBILITY LLC (NEW CINGULAR  
WIRELESS PCS, LLC (U 3060 C); CAGAL CELLULAR COMMUNICATIONS (U 3021 C);  
SANTA BARBARA CELLULAR SYSTEMS LTD. (U 3015 C); AND VISALIA CELLULAR  
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AT&T<sup>1</sup> hereby provides its comments on the proposed California Advanced Services Fund (“CASF”) as requested by the Assigned Commissioner’s Ruling on Phase II Issues Relating to the “California Advanced Services Fund” (“Ruling”).

## **I. INTRODUCTION**

Broadband services are playing an increasingly important role in the daily lives of California’s consumers and in California's economy. Consumers more and more rely on broadband access for conducting personal business and for entertainment. Businesses not only utilize broadband access internally, but its widespread availability increases business opportunities. Additionally, California's high-tech industries would not be possible without widespread broadband deployment.

Broadband service providers have thus already made broadband deployment widely available to meet increasing consumer and business demands for broadband services. Traditional wireline phone companies such as AT&T California and Verizon have made huge investments to bring DSL services to most customers they serve, and both are taking the next steps by further extending fiber in their networks to bring even higher speeds to customers. Cable television companies have also made, and continue to make, huge investments in their networks to provide broadband services. Wireless providers are providing “third-generation” broadband services, allowing customers to access and use personal and enterprise email accounts and to access the internet while they are on the go; they also continue to invest heavily both to increase the speed of their offerings as well as to increase their broadband geographic coverage. Broadband through satellite is available ubiquitously. All of this investment, by all of these varied businesses, has occurred in a competitive, unregulated market, with each entity taking the risks and rewards of their investment decisions.

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<sup>1</sup> AT&T California (U 1001 C); AT&T Advanced Solutions Inc. (U 6346 C); AT&T Communications of California (U 5002 C); TCG San Francisco (U 5454 C); TCG Los Angeles, Inc. (U 5462 C); TCG San Diego (U 5389 C); AT&T Mobility LLC (New Cingular Wireless PCS, LLC (U 3060 C); Cagal Cellular Communications (U 3021 C); Santa Barbara Cellular Systems Ltd. (U 3015 C); and Visalia Cellular Telephone Company (U 3014 C)).

A fund such as the CASF, constructed appropriately, can augment what companies are already doing to provide Californians access to high speed services. The new fund should not negate the benefits already being attained through current broadband deployment or stifle future investment. In our comments below, AT&T urges the Commission to structure the CASF so that existing incentives to invest in broadband deployment, the very incentives that have resulted in broad-based access to high speed services for Californians today, are not eliminated. Principally, it is critical that the CASF not provide a subsidy to a new entrant if there is already a broadband provider in the area. To do so will unavoidably affect the competitive market negatively by penalizing providers who already built with their own capital. In response, private investors will become less likely to enter California markets for fear of having to compete against a prospective, subsidized competitor. As proposed, the CASF will, in fact, create an adverse environment for infrastructure investment in California.

The CASF should also not consider an area “unserved” if the broadband that is available is not 3 Mbps download and 1 Mbps upload. This standard is much too high. Those speeds may provide capabilities useful in the future, but they currently are well beyond those available to or needed by most Californians. The CASF must focus on supporting the areas of the state where there is truly no broadband service (other than through satellite service). A much lower speed threshold that reflects the current competitive market offerings should be used to define acceptable broadband access and delineate where public support may be needed to provide minimally acceptable broadband facilities. Ignoring the current competitive broadband market offerings would lead to harmful economic distortions that will jeopardize the viability of sustained investments in broadband facilities.

AT&T supports a reasonable requirement whereby CASF funding recipients would be required to match CASF funds with their own private capital. Funding should be disbursed as the broadband provider makes its own investment. The CASF fund should not, at this point, collect monies to be disbursed over time. Rather, only after the parameters of the program are set, and applications are approved, should the Commission determine the CASF fund size.

With regard to identifying areas that should be a priority for receiving a subsidy, AT&T suggests that the Commission work with providers as well as CETF and the Governor's Broadband Task Force to identify areas that could most benefit from subsidies for infrastructure development as well as other issues that limit broadband utilization, rather than subsidizing duplicative broadband networks of speeds well beyond those required for high speed internet access.

## **II. DISCUSSION**

- A.** *Address the policy merits and legal basis for funding and administering the CASF under the provisions of the CHCF-B program versus establishing an entirely new independent funding program pursuant to the Commission's statutory authority under Pub. Util. Code § 701.*

### **1. Legal Basis for a Broadband Fund**

When it was first proposed that CHCF-B money be made available to fund the building of broadband facilities, many parties (including AT&T California) questioned the legality of the proposal, because § 270 (b) and (c) limit the permitted use of CHCF-B money.<sup>2</sup> In response to these comments, the Interim Decision revised the proposal to limit support to broadband facilities that include “basic telephone service [as] one of the components of any broadband service.”<sup>3</sup> On that basis, the Commission concluded that CHCF-B money could be used to fund the deployment of broadband facilities. While the Commission may very well be right, and while supporting broadband facilities that provide voice service may qualify as “within the prescribed purpose of Pub. Util. Code § 739.3,”<sup>4</sup> it remains difficult to square the end result with § 739.3(c), that further requires “local rate support ... where the cost of providing services exceeds rates charged by providers.” Nevertheless, the issue is only one of choosing the correct authorizing statute. As AT&T California explained in previous comments,<sup>5</sup> and as the Interim Decision agrees, the Commission has “discretion to continue the B-Fund” even after Section

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<sup>2</sup> Unless otherwise noted, statutory references herein are to the Public Utilities Code.

<sup>3</sup> D.07-09-020, *mimeo*, p. 69.

<sup>4</sup> *Id.* at 67.

<sup>5</sup> Comments of AT&T California, p. 14 (Apr. 27, 2007).

739.3 expires on January 1, 2009, “as necessary to meet universal service goals.”<sup>6</sup> While not cited, the Commission’s discretion would come from § 701, not from § 739.3. However, as described in the next section, there are policy implications of relying on § 739.3 rather than § 701 as the basis for the CASF.

## **2. Policy Implications of Legal Basis for Broadband Fund**

To address § 270's limitations on the permitted use of CHCF-B money, the Interim Decision states that proposed broadband facilities must provide “basic telephone service” to qualify for CASF support.<sup>7</sup> AT&T does not oppose restricting eligibility for funding to those broadband services that can provide voice functionality, but believes the Commission's current definition of “basic telephone service” is too restrictive for that purpose. The definition is premised on the historical wireline offerings and should be streamlined to focus on the core functionality critical to consumers, eliminating the bias toward legacy wireline service.

The current definition of basic service lists 17 specific requirements.<sup>8</sup> There are serious policy implications of extending these requirements (which were developed for legacy wireline service in a regulated environment) to broadband facilities because they will restrict a potential provider's ability to meet its obligations through new technologies that could benefit consumers. For instance, one of the Commission’s requirements is that basic telephone service must include “lifeline” or ULTS, and in turn ULTS is required to be tariffed.<sup>9</sup> But two leading advanced services -- wireless voice services and Voice Over Internet Protocol (“VoIP”) services -- are not tariffed. Similarly, providers of “basic residential service” in California must also allow customers to be able to choose flat or measured rate service. This is also an artifact of legacy wireline local service. Many if not most wireless carriers today, including AT&T, have consumer-friendly, national calling plans that include a “bucket” of minutes that allows nationwide long distance and roaming within the U.S.; but, generally wireless carriers do not

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<sup>6</sup> D.07-09-020, *mimeo*, p. 29.

<sup>7</sup> *Id.* at 68-69.

<sup>8</sup> D.96-10-066, *mimeo*, Appdx. B, p. 5.

<sup>9</sup> See G.O. 153, § 3.3.



have calling plans that correspond to local flat or measured rate service. Extending the definition of basic residential service to broadband services would potentially preclude wireless and VoIP from participating, a result that would substantially (if not completely) eviscerate the benefit of CASF. There may be other requirements in the Commission's definition of basic residential service that could be problematic for wireless or VoIP providers.

The Commission should modify the requirements of basic residential service so as not to preclude technologies other than traditional wireline service generally, or at the very least for purposes of the CASF program. Alternatively, it should not rely on the CHCF-B Fund, and its basic service requirements, as the source for CASF. Extending these restrictive requirements to participation in the broadband program will discourage, or possibly even prohibit, other providers and technologies from participating, increase the costs of overall deployment, and provide no real benefit to consumers.

**B.** *What overall dollar amount, funding source(s), and time considerations are appropriate for the CASF to build advanced infrastructure in California? To what extent should matching funds be required? To what extent, and subject to what criteria, should existing B-Fund contributions (versus independent sources) be used to fund the CASF?*

**1. What Overall Amount, Funding Source(s), and Time Considerations Are Appropriate for CASF to Build Advanced Infrastructure in California?**

The overall dollar amount appropriate for CASF cannot be known or even reasonably estimated until the threshold decisions regarding program parameters are made, and demand based on those parameters is assessed. The details of the projects to be funded -- such as the transmission speed requirements, the time to build, and the extent, topographies, and populations of proposed service areas -- are all prerequisites to identification of a reasonable overall dollar amount. While some dollar limit could be set in advance, the amount would be inherently speculative and might force the Commission to reject worthy projects simply because they exceed the predetermined limit. AT&T suggests that the Commission collect funds as they are needed, based on applications received and expenditures that will be paid over time. The

Commission can set and adjust surcharges to collect amounts that will reasonably be expended every six months. If the first applications are due before 2008, the surcharge can be set in January of 2008, to recover the first six months of expenditures; in June of 2008 that surcharge can be updated to recover forecasted expenditures from the 2007 applications and any approved in the first part of 2008.

The deployment of broadband facilities takes time, so project costs are not incurred all at once. Thus, the CASF need not and should not transmit all of the grant amount at the beginning of a build. Rather, funds should be paid in matching amounts as the applicant's own share of the investment is made. This way, the Commission can also collect funds on an as-needed basis, rather than over-collecting up front (which would place an unnecessary burden on customers). Collecting as needed also avoids a potential large surplus that could be diverted or remain unspent after termination of the CASF. Moreover, reimbursing recipients for concrete costs, rather than advancing funds up front, reduces the financial risk to the fund. In addition, this approach will allow the Commission to balance the desire for greater deployment with the cost to consumers based on the specific facts of the deployment applications.

The funding sources for CASF should be the same as for all other Commission public policy programs. All California residents enjoy the benefits of such programs, including the benefits of expanded broadband availability, in one way or another. Thus, all California residents should share the cost. To accomplish that sharing, surcharges are currently assessed as a percentage of intrastate, retail telecommunications revenues (an all end-user surcharge). In R.06-05-028, the Commission is considering changing this method to account for unregulated services. If the Commission adopts changes for funding other public policy programs, those changes should also apply for funding the CASF.

## **2. To What Extent Should Matching Funds Be Required?**

The Interim Decision correctly recognizes that matching funds should be required.<sup>10</sup>

AT&T agrees the Commission should require applicants to put up matching funds and that it be a substantial amount of at least 50% of the one-time investment necessary to deploy services in unserved areas. Clearly, the applicant should have some of its own “skin in the game” rather than having the CASF bear the bulk of the project’s cost (and risk). Moreover, the Commission should expressly state that increasing the percentage of costs borne by the applicant, rather than by the CASF, will increase the application’s chances of success. A matching requirement will help ensure efficient investment decisions and efficient execution of the building of broadband facilities. Further, matching investment when it is actually spent by the carrier also allows the Commission not only to monitor distribution but also to avoid over-collection and overpayment.

The Ruling also appears to contemplate a substantial match, for example 50% match in areas defined by the Commission as “underserved.” AT&T strongly opposes the use of any subsidies in areas where one broadband provider that meets the Commission’s service criteria is already present. First, given that the CASF is new and has limited funds, the Commission should target areas where the desired service is currently unavailable -- thereby focusing on the areas of greatest need -- rather than using its limited funds to add more providers in areas that are already being served. Second, the fact that one provider entered the area without support provides compelling evidence that no support is needed for an efficient provider to enter. Third, using state funds to support a second (or third) provider would give that provider an artificial competitive advantage, and would be fundamentally unfair to the existing provider(s), that undertook by itself the cost and the risk of investing to serve the area. Additional providers are of course welcome to enter the market and compete by undertaking the same cost and risk, but the CASF should not pick sides in that competition or subsidize one competitor over another. Last, and perhaps most significantly, the Commission’s proposal will actually serve to upset the

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<sup>10</sup> D.07-09-020, *mimeo*, pp. 71-72.

environment for future investment in infrastructure in California. Providers will become less likely to invest their own capital for fear of having to compete against a prospective, subsidized competitor.

**3. To What Extent and Subject to What Criteria, Should Existing B-Fund Contributions (Versus Independent Sources) Be Used to Fund The CASF?**

Existing B-Fund contributions should not be used to fund the CASF. The Interim Decision orders a decrease in the surcharge as of January 1, 2008, to the level needed to generate the support needed by existing B-Fund recipients to serve high-cost areas. That surcharge should be further reduced each time the draws are scheduled to decrease, based on the scheduled changes to the benchmark.<sup>11</sup> Given these reductions, the existing contributions are not likely to be enough to adequately fund the CASF on top of support for basic service. As described above, every six months the Commission should determine the amounts it will need to fund approved builds for the next six months. The Commission can then adjust the CHCF-B surcharge or a separate surcharge to collect those amounts. In this way a large, unused surplus will not be generated. AT&T recommends that the CASF be capped so that, when combined with the funds necessary to support local service, it would not exceed the size of the B-Fund as of today.

**C. *What process should be established for prospective applicants to apply for and receive grants of CASF money for the purpose of deploying broadband services which will include as one component basic residential service within underserved or unserved areas consistent with universal service goals as discussed in D.07-09-020?***

The first -- and absolutely critical -- step in defining the process for CASF applications is to clearly define, in advance, the criteria to be used in reviewing and deciding upon applications. Prospective applicants need to understand the criteria in advance, both (i) to make an informed decision as to whether to seek funding in the first place, and (ii) to present the information that the Commission wants to see, in the manner that the Commission wants to see it. That way, all applications will be judged based on their merits, rather than on the applicant's understanding (or

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<sup>11</sup> See D.07-09-020, Appendix Table 1.

misunderstanding) of the criteria. Below, AT&T discusses first the various criteria that should be considered, and presents its recommendations as to how the Commission should approach and evaluate them.

AT&T then makes its recommendations as to the best process for applicants to demonstrate they satisfy the criteria. As described below, the application process should be purely voluntary. This Commission had made great strides in deregulating the telecommunications and advanced service markets, and deregulation has played a critical role in the enormous growth of advanced services this past decade. The CASF can and should work within a deregulatory framework.

## **1. Selection Criteria**

### **a. Eligible Providers**

As demonstrated in the response to Question 7 below, the recipients of CASF money should be limited to those entities that qualify as “telephone corporations” under § 234. Further, telephone corporations whose broadband deployment costs are subject to rate-of-return regulation should be excluded from the CASF process. Such corporations already include deployment costs in their rate bases, and can recover those costs through access and other charges.

### **b. Supported Facilities**

The Commission should establish minimum service parameters up front, and clearly define the types of broadband facilities that are eligible for support. Question 3 of the Ruling suggests that broadband facilities must provide services that “include as one component basic residential service.”<sup>12</sup> AT&T agrees with this approach in principle, as it maintains the Fund’s consistent purpose of supporting basic connectivity. However, as described in response to Question 1, AT&T recommends that the definition of basic residential service be updated and streamlined to reflect today’s current customer needs and alternate technologies’ capabilities.

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<sup>12</sup> Ruling, p. 2; *see also* Interim Decision, p. 69 (“We believe we have authority under existing statutes to use the CHCF-B as long as basic telephone service is one of the components of any broadband service.”).

AT&T recommends that the Commission not require supported facilities to provide minimum data speeds. The Commission should use either the FCC definition of broadband (200 Kbps in either direction) or the minimum speed being mapped by the Governor's Broadband task Force (500 Kbps total). While services at 3 Mbps download and 1 Mbps upload speeds have many benefits, they are not necessary for voice applications or high speed internet access, or even for important applications like video relay services. Moreover, today there are areas in California that, other than satellite service (which does not generally support a VoIP application), do not have broadband service available even at lower speeds.<sup>13</sup> Setting a high minimum data speed threshold will necessarily increase the deployment costs of the program, such that CASF support will be available to fewer areas. It may also prohibit some rural areas from even benefiting from the program at all. Conversely, setting a lower data speed threshold would result in lower deployment costs, potentially facilitating increased deployment in more areas of the state. Hence AT&T respectfully submits that the Commission (1) prioritize its efforts on encouraging the deployment of broadband services in areas where no broadband service is available, and (2) not limit support to facilities capable of providing service at 3 Mbps download/1 Mbps upload speeds or higher. The Commission should allow support to be utilized for facilities capable of lower broadband data transmission speeds, but should also allow funding for applicants proposing the deployment of service at higher speeds. Such an approach would still satisfy the Commission's worthy goal of encouraging applicants to put their best -- and fastest -- foot forward, and of promoting deployment at the desired capacities wherever possible. At the same time, though, the Commission would also ensure that other areas with the least connectivity are not left behind.

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<sup>13</sup> The FCC currently defines "broadband" service as having data transmission speeds exceeding 200 Kbps at least in one direction, downstream or upstream. *See In the Matters of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket Nos. 02-33, etc., *Report and Order and Notice of Proposed Rulemaking*, 20 FCC Rcd. 14853, FCC 05-150 (rel. Sept. 23, 2005).

**c. Geographic Areas Eligible for Support**

**“Unserved” Areas.** The Ruling properly contemplates that support would be available for unserved areas, and that an applicant demonstrates that the area for which it seeks support is currently unserved. However, “unserved areas” should be defined as those where service is not currently available at 200 Kbps in either direction (or, alternatively, the definition of unserved could be the 500 Kbps used as the minimum reporting speed by the Governors Task Force<sup>14</sup>), rather than 3 Mbps download and 1 Mbps upload.

**“Underserved” Areas.** The Ruling also contemplates support for “underserved areas.” As described above, the CASF should not subsidize deployment in areas where there is already at least one provider.

**Census Block Groups.** Since the inception of the Fund, the Commission has used the geographic areas known as the “Census Block Groups” or “CBGs” as the area to be analyzed to determine eligibility for Fund support. The Interim Decision and the Ruling anticipate that applicants would disclose their current infrastructure and planned deployment “by census block group.”<sup>15</sup> For purposes of the CASF, the CBG represents a useful reference point, and each application *should* state which CBGs are to be served. In this way, the applications will have a common geographic denominator and the Commission can more quickly and easily identify competing or overlapping applications. That said, however, the Commission should not use the CBG as a hard and fast requirement. First, the Commission should not classify an area as eligible only if the *entire* CBG does not have access to the desired service. Broadband networks do not follow CBG boundaries. It is possible (and in fact quite likely) that there are many CBGs where some customers have access to the desired broadband service, but others have no access to that service. Characterizing the entire CBG as ineligible would prevent funding for many CBGs that are partly unserved by desired service and which would benefit from the program.

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<sup>14</sup> The Governor's Task Force on Broadband Deployment has used 500 Kbps (combined) as the minimum speed for mapping. *See, e.g.*, California Broadband Task Force Letter to Broadband Providers, pp. 2-3 (June 28, 2007). This speed may be a more up-to-date, appropriate number for California.

<sup>15</sup> D.07-09-020, *mimeo*, Appdx. 3, p. 1.

Second, the Commission should not require prospective service providers to file a separate application for each CBG. Service providers may plan to deploy facilities that cover several CBGs, or partial CBGs, at once, and the Commission should encourage such deployment. Allowing applicants to combine areas in their proposals will appropriately and efficiently recognize economies of scale and scope that can help bring down the overall costs of broadband deployment under the CASF program, ultimately increasing the number of consumers that would benefit from the program. It would also be more efficient for the Commission to review applications for combined areas, rather than piecemeal. Thus, the applicant should present a single planned deployment as a whole, while disclosing all the CBGs that are to be served by that deployment.

Third, the Commission should not require that an applicant serve an entire CBG or group of CBGs with a proposed deployment. The best and most efficient plan for constructing broadband facilities will almost certainly not correspond to the boundaries of a CBG, and the Commission should not require that a carrier employ an inefficient design simply to cover every last bit of every CBG at hand. Further, part of a CBG may already have access to the desired service, so covering the entire CBG may not provide any real benefit to consumers. The Commission should simply assess the benefits that will be provided from the areas that *are* proposed, rather than requiring a proposal to fit any specified geographic boundaries.

**High Cost Areas.** Finally, the Interim Decision suggests (at Appdx. 3, p. 1) that funding might further be limited to “high cost area[s].” To the extent the Commission plans to limit the upcoming applications to areas that *currently* qualify as “high cost areas,” AT&T respectfully suggests that such a limitation would be inappropriate. The current identification of high cost areas is based on the analysis of basic service costs conducted a decade ago. That analysis addressed the costs of providing basic services under a definition that excluded broadband service.<sup>16</sup> It would be inappropriate to define “high cost areas” for broadband service on the

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<sup>16</sup> D.96-10-066, *mimeo.* p. 31.



basis of costs that are not related to broadband service (and that were estimated years ago, before much of the growth in advanced services). Likewise, although the Interim Decision calls for an update of the cost analysis, those updates would not be properly used for CASF purposes because they would also be based on the costs of basic service, not the costs of broadband.

## **2. Application Requirements**

To better address the above criteria, to provide for more easily comparable applications, and to carry out the purposes of the CASF, AT&T proposes that the Commission require each application to address the following issues. These requirements should be imposed *only* on carriers that desire and apply for funding, and *only* on those projects for which funding is granted. The Commission has achieved great success in encouraging the deployment of advanced services through a deregulated, market-driven framework. While an applicant that obtains funding support should undertake some additional obligations, those obligations should serve only as conditions to the receipt of support, not as freestanding regulations on all service providers.

**Project Plans.** The application's "project plans"<sup>17</sup> should specify the type of facilities to be deployed (*e.g.*, fiber optic cable), the geographic areas and number of households or potential subscribers to be covered (including a list of covered CBGs and "maps of the proposed service area"<sup>18</sup>), total project cost, the amount of CASF support sought, and the amount of the applicant's own funds that will be used. The Commission should establish a minimum percentage of investment for the applicant to bear, such as the 50 percent "match" described in the Interim Decision.

**Deployment Schedule.** The applicant should state the expected (and the maximum) period of time anticipated for deployment to be completed, along with "specific milestones which must be verifiable by Staff."<sup>19</sup> The Commission should require all deployments to be completed within two years of approval, subject to an extension of time if the applicant

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<sup>17</sup> Interim Decision, *mimeo*, Appdx. 3, p. 1.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

demonstrates that an extension is necessary due to factors outside of its control (*e.g.*, permitting requirements) despite its exercise of due diligence.

**Commitment to Serve.** The applicant should commit to offer the supported service upon completion of deployment to all households within the area defined by the application, for a minimum period specified by the Commission, such as five years.

The applicant should also provide the anticipated price to customers per Mbps of the service or services to be supported, as suggested by the Interim Decision (at Appdx. 3, p. 2). The applicant should make a voluntary *commitment* as to the price of supported services, and the Commission may give additional weight to an application based on that commitment. However, the Commission should not impose a price cap or pricing schedule. Such a requirement would mark a step backward towards the type of price regulation that this Commission has worked hard to dismantle.

**Financial Qualifications.** The applicant should meet minimum financial qualifications established by the Commission, to back its commitments of performance. Its application should disclose financial data demonstrating its ability to perform, such as credit ratings. The Interim Decision suggests that a performance bond be required. While a bond may be necessary in some cases (*e.g.*, new providers with no financial track record) the Commission should reduce or eliminate altogether the bond requirement for carriers with established service records and credit ratings. In such cases, a performance bond provides no real added assurance, only added (and unnecessary) costs.

**Proposed Performance Commitments.** As described in response to Question 4, applicants may wish to propose voluntary performance commitments: financial incentives (or disincentives) to demonstrate their commitment to performance of the project.

**Accounting Safeguards.** Applicants should describe the manner in which they will separately account for and control project costs. *See Question 6 infra.*

### **3. Other Elements Of The Application Process**

By their very nature, CASF applications will contain highly sensitive and proprietary business material, because they will disclose the applicant's business plans (in particular the geographic areas where the provider plans to provide broadband service in the near future). Obviously, such information should not be disclosed or made available to the public, or to the applicant's competitors, on an unfettered basis. The Ruling expressly acknowledges that applicants would submit data regarding their current infrastructure "under appropriate confidentiality provisions."<sup>20</sup> The same protections should apply to data regarding the applicant's planned deployment. All proprietary material in CASF applications should be designated as such, and subject to tight confidentiality restrictions. All persons or telephone corporations desiring access to CASF applications should be required to execute confidentiality agreements.

### **4. Program Duration**

It appears that the Commission intends the CASF to be of limited duration, because it envisions the implementation of a reverse auction process that might replace these explicit subsidies. Further, the Interim Decision states that funding not directed for use by January 1, 2010, would be used to reduce the Fund B surcharge. AT&T California does not oppose a limited duration for the CASF. If the CASF operates as planned, the number and size of unserved areas should decrease, and the need for further subsidies would be reduced accordingly.

**D.** *Comments are solicited on the merits of the process to apply for funding the California Advanced Services Fund in Appendix 3 of D.07-09-020. Are there additional requirements that should be added to help avoid waste, fraud, and abuse? For any suggested modifications, clarifications, or refinements to the process proposed in Appendix 3, parties should provide supporting rationale.*

#### **1. Application Process**

As discussed in response to Question 5, the Commission should employ a single application process, without opening an additional window for parties to submit applications that compete with those filed in the first round. With respect to the application process itself, AT&T

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<sup>20</sup> Ruling, p. 1; *see also* Interim Opinion, *mimeo*, Appdx. 3, p. 1.

recommends that the Commission should clearly specify in advance the criteria that will be used for evaluating applications, as set forth in response to Question 3. For the same reason, the Commission should ensure that applications are directed to areas that are truly unserved by the desired service. To that end, the application process should not begin until these areas are identified, using the objective data developed through the reports submitted to the Governor's Task Force on Broadband Deployment. Prospective applicants will then know which areas are eligible for funds, rather than having to prove that the area is eligible and hoping that the Commission will agree.

In reviewing applications, the Commission's Staff should consider the criteria set forth in response to Question 3. Commission Staff should also verify that the areas for which funds are requested are eligible by reference to the data generated by the Task Force, reports provided by objective entities, or by public comment. In addition, where competing applications address the same or similar geographic areas, Commission Staff should prioritize projects that provide access to the greatest number of households at the lowest cost. The "overall size of the request" is certainly a factor to consider,<sup>21</sup> but the Commission should also give weight to an efficient request that provides more "bang for the buck." AT&T agrees with the Interim Decision that the Commission should prioritize projects with the shortest completion times.

The Interim Decision also suggests that Commission Staff will prefer applications that have a lower "price per MBPS."<sup>22</sup> While that is worth considering, the analysis should not be based on these data alone. Rather, Staff should consider that price/Mbps is in part a function of deployment costs that can vary between geographic areas, based on topography and other factors. Areas with the highest cost of deployment may be the best candidates for CASF support, as they have the most need for subsidization, and they should not be screened out by their higher price per Mbps.

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<sup>21</sup> Interim Decision, Appdx. 3, p. 2.

<sup>22</sup> *Id.*

Finally, the Commission should make clear that Commission Staff is not compelled to grant any application on the ground that it is the only one that would serve a given area. If an application does not satisfy the criteria established by the Commission, it should not be accepted, regardless of whether it is the only one for its area.

## **2. Additional Requirements to Avoid Fraud, Waste, or Abuse**

The Ruling already contemplates two significant methods to prevent fraud, waste, or abuse. As described in response to Question 1, the Ruling correctly provides that support will be in the form of *matching* funds, not pure handouts. Applicants will have to put up their own funds, or obtain funds from private investors, to support at least half the estimated cost of their projects. They will not be playing with “house money.” As AT&T shows above, the straightforward protection of a matching requirement can be reinforced by requiring that CASF money be disbursed as the applicant’s own funds are spent, not before.

- E.** *Comments are solicited as to whether an application for CASF funding should trigger and open a 60-day window for other applications for substantially the same geographic area.*

AT&T recommends that the Commission set a single deadline for applications, and not allow a 60-day window for competing applications after the initial deadline passes. That way, applicants would have to make their best case for funding on the first try and the Commission can efficiently compare requests for the same area.

- F.** *D.07-09-020 stated that CASF applicants must meet specific audit, verification, and other requirements with respect to the use of the funds, subject to procedures adopted in the next phase of the proceeding. Parties should identify specific audit, verification, and other requirements that would be warranted as a basis to administer the CASF funding consistent with the universal service goals as discussed in D.07-09-020.*

The Interim Decision and the Ruling correctly recognized that audit, verification, and other safeguards are essential. The commitments in an application would be meaningless unless there are adequate measures to ensure that those commitments are carried out in practice.

**Accounting.** The first step in auditing and verification is the applicant’s own procedures and controls to ensure proper accounting for project costs. The applicant’s practices must

provide a sufficient audit trail. In this regard, a recipient of CASF support should be required to maintain a separate project code to collect costs incurred for the funded deployment -- and *only* those costs. Materials and labor costs should be charged to that separate code as they are incurred, and project costs should be tracked by major category (with accounting line items that match those used for estimated costs in the application). Each application should clearly state, in detail, the accounting methods that will be used to accurately segregate project costs and to prevent commingling of other expenses with those project costs. Further, the applicant should describe, in detail, any internal verification procedures and controls (*e.g.*, a check of expense items by engineers or accountants prior to recording, internal audit procedures to test project accounts).

**Reporting.** As described in response to Question 1, the CASF administrator should disburse matching funds when the applicant demonstrates it has spent its own funds. As a side benefit, this feature creates a periodic reporting requirement. The recipient of support should provide a detailed report at regular intervals, stating the costs incurred by line item, comparing actual costs to estimated costs, and describing the status of the project (and how that status compares with the company's plan). The report should be accompanied by a verification signed by an appropriate person having authority over the project within the company. AT&T proposes quarterly reporting, to provide for close tracking while avoiding the cost and burden of monthly reports.

**Record-keeping and Document Retention.** The FCC has recognized that "recordkeeping requirements not only prevent waste, fraud, and abuse, but also protect applicants and service providers in the event of vendor disputes."<sup>23</sup> Thus, at the federal level, the FCC's rules "require recipients of universal service support for high-cost providers to retain all records that they may require to demonstrate to auditors that the support they received was

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<sup>23</sup> *In the Matter of Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*, WC Docket Nos. 05-195, etc., *Report and Order*, 2007 WL 2457407, FCC 07-150 (*rel. Aug. 29, 2007*), ¶ 23.

consistent with the Act and the Commission's rules, assuming that the audits are conducted within five years of disbursement of such support."<sup>24</sup> "These records should include without limitation the following: data supporting line count filings; historical customer records; fixed asset property accounting records; general ledgers; invoice copies for the purchase and maintenance of equipment; maintenance contracts for the upgrade or equipment; and any other relevant documentation."<sup>25</sup> AT&T recommends that the Commission adopt the same requirements for the CASF. In addition, AT&T recommends that the Commission establish the same five-year document retention program that applies at the federal level.<sup>26</sup> Of course, the Commission should also make clear that to the extent other applicable law requires that any documents be retained for more than five years, such laws remain in force.

**Audits.** All CASF recipients should be subject to compliance audits by an independent auditor, conducted in accordance with standards established by the American Institute of Certified Public Accountants. However, external audits are burdensome, and might distract critical personnel from their project duties. Audits should generally be conducted after the completion of projects selected by the Commission for review, or at a defined interval (say, after fiscal year-end) so that the recipient can plan its schedule in advance. Otherwise, audits should be conducted during the project only where the Commission has good cause to believe there has been some kind of violation or error in reporting.

To add further protection, the Commission should adopt enforcement mechanisms similar to those adopted at the federal level. The Commission should "debar" any party from participating in or receiving money from the CASF if they are convicted of any criminal acts or held civilly liable for acts relating to their participation in the CASF.<sup>27</sup> In addition, the Commission should adopt procedures for the recovery of funds that are disbursed in violation of any provision of state or federal law or the Commission's rules: for example, as the result of a

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<sup>24</sup> *Id.* at ¶ 24.

<sup>25</sup> *Id.*

<sup>26</sup> *See id.*

<sup>27</sup> *Id.* at ¶ 32.

fraudulent report by the recipient.<sup>28</sup> As at the federal level, such sanctions should be limited to cases of fraud, waste, or abuse, as opposed to clerical or ministerial errors.<sup>29</sup>

**G.** *If Pub. Util. Code § 739.3 is the basis for the CASF, comments are solicited as to whether the use of the term "telephone corporation" in that section may limit recipients of CASF money to those entities qualifying under Pub. Util. Code § 234.*

If § 739.3 is the basis for CASF, the use of the term "telephone corporation" in § 739.3 would limit the recipients of CASF money to those entities qualifying under § 234. Even if § 701 is used, the Commission should limit recipients to telephone corporations defined under § 234 so the Commission has the full use of its powers in regulating the use of CASF money. It is important to note that while entities that can receive funds should be telephone corporations, the actual providers of services over the broadband facilities may not be telephone corporations, as the services could well be solely interstate services (*i.e.*, high speed internet service or VoIP). Additionally, the Commission must clearly avoid any attempt to extend regulation over services it does not regulate.

### **III. CONCLUSION**

AT&T requests that any fund to support broadband services reflect the considerations expressed in these comments.

**[SIGNATURE PAGE FOLLOWS.]**

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<sup>28</sup> *Id.* at ¶ 30.

<sup>29</sup> *Id.*



Dated at San Francisco, California, this 26<sup>th</sup> day of September 2007.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Morena E. Lobos, hereby certify that I have this day served a copy of the foregoing **OPENING PHASE II COMMENTS OF AT&T CALIFORNIA (U 1001 C); AT&T ADVANCED SOLUTIONS INC. (U 6346 C); AT&T COMMUNICATIONS OF CALIFORNIA (U 5002 C); TCG SAN FRANCISCO (U 5454 C); TCG LOS ANGELES, INC. (U 5462 C); TCG SAN DIEGO (U 5389 C); AT&T MOBILITY LLC (NEW CINGULAR WIRELESS PCS, LLC (U 3060 C); CAGAL CELLULAR COMMUNICATIONS (U 3021 C); SANTA BARBARA CELLULAR SYSTEMS LTD. (U 3015 C); AND VISALIA CELLULAR TELEPHONE COMPANY (U 3014 C))** on all persons on the official service List in **R.06-06-028**, via e-mail, hand-delivery and/or first-class U.S. Mail.

Dated this 26<sup>th</sup> day of September 2007 at San Francisco, California.

AT&T CALIFORNIA  
525 Market Street, 20<sup>th</sup> Floor  
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\_\_\_\_\_  
/s/

Morena E. Lobos

# CALIFORNIA PUBLIC UTILITIES COMMISSION

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